

THE ABS
CAPACITY
DEVELOPMENT
INITIATIVE



L'INITIATIVE DE
RENFORCEMENT
DES CAPACITES
POUR L'APA

Key Elements of ABS Frameworks: EU, France, Germany, Denmark

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DANISH MINISTRY
OF THE ENVIRONMENT



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Examples from the EU and its Member States

- EU: Regulation (EU) No 511/2014 on compliance measures for users from the Nagoya Protocol
- FR: Projet de loi relatif à la biodiversité
- DE: Bill on implementing the obligations arising from the Nagoya Protocol and implementing the Regulation EU 511/2014
- DK: Act on sharing benefits arising from the utilisation of genetic resources (pre-NP)



Competent National Authority

EU

- each MS must designate at least one CNA



Competent National Authority

France	Germany	Denmark
<ul style="list-style-type: none">• Ministry of Agriculture, Agrifood and Forestry• Ministry of Ecology, Sustainable Development and Energy• Ministry of Social Services and Health	<ul style="list-style-type: none">• Federal Agency for Nature Protection• on issues of agricultural and human GR the respective Federal institutions need to be involved	<ul style="list-style-type: none">• Ministry of Environment
<ul style="list-style-type: none">• uniform permit format		<ul style="list-style-type: none">• will issue several regulations



Access regulation

EU

- access is not an issue for EU legislation
- determining on access is still under national sovereignty
- most EU member states will not require PIC
- mediterranean member states announced to introduce PIC



Access regulation

France	Germany	Denmark
<ul style="list-style-type: none">• PIC required for access to GT and aTK	<ul style="list-style-type: none">• no PIC required	<ul style="list-style-type: none">• no PIC required
<ul style="list-style-type: none">• territorial scope: France, Martinique, Guadeloupe, French Guyana, Réunion and Mayotte		



PIC procedure for GR

France

declarative procedure (no PIC) for

- access for non-commercial research
- pathogens in emergency situation
- ex-situ collections

authorisation procedure (PIC) for GR in
general



Benefit-sharing

EU

Principles

- no specific provisions on benefit-sharing obligations
- benefit-sharing obligations only arise from MAT in ABS-contracts
- due diligence approach
 - users have to ensure their own compliance
 - minimal oversight by EU and MS institutions

Effects on provider countries

- user must comply with ABS regulation of the country of origin that is a Party to the NP
- no obligations for users utilising GR and aTK from countries that do not have ABS regulations



Benefit-sharing

France	Germany	Denmark
<p>for national access</p> <ul style="list-style-type: none">• model clauses in case of declaratory authorisation• full MAT in case of authorisation procedure	<ul style="list-style-type: none">• no specific benefit-sharing clauses related to countries of origin	<p>pre-NP Law</p> <ul style="list-style-type: none">• benefit-sharing obligation for utilisation in research and for developing and marketing of products based on GR
<ul style="list-style-type: none">• benefits go to French Agency for Biodiversity• benefits may go to local community		



EU

- all recipients of research funding must declare due diligence to the checkpoint; e.g. universities receiving project funding from national or EU research funding agencies
- excludes industry and budget-funded research institutes, e.g. all Federal German research institutions (Helmholtz-, Leibniz-, Fraunhofer-, Max-Planck-institutes)
- all user must declare due diligence in the final stage of product development
- compliance rules do not extent to „subsequent applications and commercialization“, e.g. commercialisation of products based on GR and aTK is not covered by the EU ABS Regulation



Compliance

France	Germany	Denmark
<p>in addition:</p> <ul style="list-style-type: none">• benefit-sharing obligations need to be passed to third party users• information on PIC and MAT need to be passed to the French National Industrial Property Institute if a patent is applied for	<p>in addition:</p> <ul style="list-style-type: none">• German patent office needs to inform CNA if patent discloses the origin of GR	<p>in addition:</p> <ul style="list-style-type: none">• benefit-sharing obligation for utilisation for research and for developing and marketing of products based on GR



Illegal Utilisation and Commercialisation

EU

- adopted definition for illegal utilisation
- excluding illegal commercialisation
- no operational text on illegal utilisation or commercialisation



Illegal Utilisation and Commercialisation

France	Germany	Denmark
<p>in addition:</p> <ul style="list-style-type: none">• civil and criminal law sanctions possible• up to 1 year prison and 150,00 EUR fine• 1 mill EUR fine in cases with commercial purpose• denial of application for commercialisation	<ul style="list-style-type: none">• breach of compliance is an administrative offence• 50,000 EUR fine• no prohibition of illegal utilisation and commercialisation	<p>in addition:</p> <ul style="list-style-type: none">• prohibition of utilisation of illegally aquired GR and aTK



Thank you very much!

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